

### Subpart 203.9—Whistleblower Protections for Contractor Employees

#### 203.900 Scope of subpart.

This subpart applies to DoD instead of FAR subpart 3.9.

(1) This subpart implements 10 U.S.C. 2409 as amended by section 846 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), section 842 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), and section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239).

(2) This subpart does not apply to any element of the intelligence community, as defined in 50 U.S.C. 3003(4). This subpart does not apply to any disclosure made by an employee of a contractor or subcontractor of an element of the intelligence community if such disclosure—

- (i) Relates to an activity or an element of the intelligence community; or
- (ii) Was discovered during contract or subcontract services provided to an element of the intelligence community.

[58 FR 59853, Sept. 30, 2013, as amended at 79 FR 11337, Feb. 28, 2014]

#### 203.901 Definitions.

*Abuse of authority*, as used in this subpart, means an arbitrary and capricious exercise of authority that is inconsistent with the mission of DoD or the successful performance of a DoD contract.

#### 203.903 Policy.

(1) *Prohibition*. 10 U.S.C. 2409 prohibits contractors and subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (3) of this section, information that the employee reasonably believes is evidence of gross mismanagement of a DoD contract, a gross waste of DoD funds, an abuse of authority relating to a DoD contract, a violation of law, rule, or regulation related to a DoD contract (including the competition for or negotiation of a contract), or a substantial and specific danger to public health or safety. Such reprisal is prohibited even if it is un-

dertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(2) *Classified information*. As provided in section 827(h) of the National Defense Authorization Act for Fiscal Year 2013, nothing in this subpart provides any rights to disclose classified information not otherwise provided by law.

(3) Entities to whom disclosure may be made:

(i) A Member of Congress or a representative of a committee of Congress.

(ii) An Inspector General that receives funding from or has oversight over contracts awarded for or on behalf of DoD.

(iii) The Government Accountability Office.

(iv) A DoD employee responsible for contract oversight or management.

(v) An authorized official of the Department of Justice or other law enforcement agency.

(vi) A court or grand jury.

(vii) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(4) *Disclosure clarified*. An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a DoD contract shall be deemed to have made a disclosure.

(5) *Contracting officer actions*. A contracting officer who receives a complaint of reprisal of the type described in paragraph (1) of this section shall forward it to legal counsel or to the appropriate party in accordance with agency procedures.

[58 FR 59853, Sept. 30, 2013, as amended at 79 FR 11337, Feb. 28, 2014; 79 FR 23278, Apr. 28, 2014]

#### 203.904 Procedures for filing complaints.

(1) Any employee of a contractor or subcontractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 203.903 may file a